UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
NOV 2 8 2005
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

v.

SANTANNA NATURAL GAS CORPORATION d/b/a SANTANNA ENERGY SERVICES,
Defendant.

Case No. 05C 6711

JUDGE AMY ST. EVE

MAGISTRATE JUDGE COLE

NOTICE OF REMOVAL

Defendant Santanna Natural Gas Corporation d/b/a Santanna Energy Services ("Santanna"), by one of its attorneys, Paul F. Markoff of Crowley Barrett & Karaba, Ltd., and pursuant to 28 U.S.C. §§1441, 1452 and 1453 and Fed. R. Bankr. P. 9027, hereby removes to the United States District Court for the Northern District of Illinois, Eastern Division, all claims and causes of action in the civil action styled *People of the State of Illinois v. Santanna Natural Gas Corporation d/b/a Santanna Energy Services*, case no. 05 CH 17512, pending in the Circuit Court of Cook County, Illinois, County Department, Chancery Division (the "State Court Action"). In support of this Notice of Removal, Santanna states as follows:

1. On October 13, 2005, Attorney General Lisa Madigan ("Madigan") filed the State Court Action seeking declaratory and injunctive relief as follows:

   a. Santanna engaged in unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 (the "CFA");
   b. Enjoining Santanna from violating the CFA;
   c. Enjoining Santanna and all current and future officers, employees, agents, successors, assignees, servants, employees and affiliates from doing business in the State of Illinois;
   d. Enjoining Santanna from advertising or offering a particular natural gas sales program;

e. A forfeiture of Santanna's authority to conduct business in the State of Illinois;
f. Enjoining Santanna from invoking a *force majeure* defense vis-à-vis Illinois consumers;
g. Mandating Santanna to perform all contracts with Illinois consumers;
h. Mandating Santanna to pay a civil penalty of $50,000 plus an additional $50,000 per violation of the CFA; and
i. Mandating Santanna to pay a civil penalty of $10,000 per violation of the CFA committed against a person aged 65 or older.

A copy of the Complaint is attached hereto as **Exhibit 1** and incorporated herein by reference.

2. Madigan's requested relief is premised on the allegations that Santanna entered into oral contracts with Illinois consumers, pursuant to which Santanna agreed to sell them natural gas at fixed rates, but then allegedly breached those contracts by modifying the pricing structure following Hurricanes Katrina and Rita.

3. Also on October 13, 2005, Santanna filed for protection pursuant to the Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas, Austin Division, case no. 05-17775-FRM.

4. The State Court Action is brought as a class action, as defined by 28 U.S.C. §1332(d)(1)(B).

5. In the State Court Action, Madigan is not seeking to exercise or enforce the Office of the Attorney General's police or regulatory power, but rather is effectively acting as class counsel seeking to enforce the alleged rights of a particular putative class of plaintiffs with potential breach of contract claims and also to preclude Santanna from exercising its contractual, statutory and common law rights and defenses.

6. Madigan is the Attorney General of Illinois and a citizen of Illinois.

7. Members of the represented class are citizens of Illinois.

8. Santanna is a citizen of the State of Texas, because it is a Texas corporation and its principal place of business is in Texas.

9. There is exists complete diversity of citizenship between Santanna and Madigan.

10. There exists diversity of citizenship between Santanna and the class of plaintiffs represented by Madigan, as defined by 28 U.S.C. §1332(d)(2)(A).

11. The members of the represented class exceed 100 persons and, on information and belief, all such members are citizens of Illinois.

12. Madigan requests in excess of $75,000 in damages, exclusive of interest and costs, from Santanna and the injunctive relief sought by Madigan is in excess of $75,000, exclusive of interest and costs.

13. The matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, as defined by 28 U.S.C. §1332(d)(2).

14. On October 27, 2005, Santanna was served with a summons and the Complaint.

15. This Notice of Removal is filed within 30 days of service of the summons and Complaint.

16. This Court has subject matter jurisdiction of this matter pursuant to 28 U.S.C. §1332(a)(1) and (d)(2)(A) and 28 U.S.C. §1334.

17. Pursuant to Fed. R. Bankr. P. 9027, copies of the Complaint and summons are attached hereto as **Exhibits 1 and 2**, respectively, and no further proceedings have occurred in the Circuit Court of Cook County, Illinois.

18. This is a core proceeding.

19. Contemporaneously with the filing of this Notice of Removal, Santanna will file this Notice of Removal with the Circuit Court of Cook County, Illinois and serve this Notice of Removal on counsel of record for the People of the State of Illinois.

SANTANNA NATURAL GAS CORPORATION
d/b/a Santanna Energy Services,

By: ______________________________
Paul F. Markoff, One Of Its Attorneys

Dated: November 28, 2005

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Exhibit 1

Atty no. 99000

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, vs. SANTANNA NATURAL GAS CORPORATION, A Texas Corporation, d/b/a SANTANNA ENERGY SERVICES, Defendant.	)	No. 05CH17512

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The Plaintiff, the People of the State of Illinois, by LISA MADIGAN, Attorney General of Illinois, complaining of the Defendant, SANTANNA NATURAL GAS CORPORATION, a Texas Corporation, d/b/a SANTANNA ENERGY SERVICES (sometimes hereinafter referred to as "Defendant"), states as follows:

I.
AUTHORITY

1. This action is brought in the public interest for and on behalf of the People of the State of Illinois, by LISA MADIGAN, Attorney General of Illinois, pursuant to the provisions of the Consumer Fraud and Deceptive Business Practices Act, (hereinafter referred to as "Consumer Fraud Act"), 815 ILCS 505/1 et seq.(2004).

2. LISA MADIGAN is the Attorney General of Illinois, and in that capacity is authorized and empowered to enforce the Consumer Fraud Act. Section 7 of the Consumer Fraud Act provides in relevant part:

> Whenever the Attorney General ... has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this Act to be unlawful, and that proceedings would be in the public interest, he or she may

"EXHIBIT 1"

> bring an action in the name of the People of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction; revocation; forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.
>
> In addition to the remedies provided herein, the Attorney General ... may request and the Court may impose a civil penalty in a sum not to exceed $50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with the intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed $50,000 per violation.
>
> 815 ILCS 505/7 (2004).

II.
VENUE

3. Venue for this action properly lies in Cook County, Illinois, in that the transactions or some part thereof out of which this action arose occurred in Cook County, Illinois.

III.
DEFENDANT

4. Defendant SANTANNA NATURAL GAS CORPORATION is a Texas corporation, registered to do business in Illinois, and has a place of business in Hinsdale, Illinois.

5. Defendant is and was, at all relevant times hereto, engaged in the "trade" or "commerce" (as defined in Section 1(f) of the Consumer Fraud Act) of advertising, soliciting, offering for sale, and selling natural gas to Illinois consumers participating in the Northern Illinois Gas Company's ("NICOR") Customer Select program, and Peoples Energy Choices for You™ program, which allow consumers in eligible service areas to select an alternative, non-regulated utility gas supplier for their natural gas needs within the State of Illinois.

IV.
APPLICABLE STATUTES

6. Section 2 of the Consumer Fraud Act provides as follows:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act," approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

815 ILCS 505/2 et seq., (2004).

7. Section 1(f) of the Consumer Fraud and Deceptive Business Practices Act defines "trade" and "commerce" as follows:

> The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any service and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

815 ILCS 505/1(f) (2004).

V.
ALLEGATIONS OF FACT

8. Beginning in January, 1999, NICOR, a local gas distribution utility company, instituted its Customer Select program, whereby commercial end-users in parts of Illinois serviced by NICOR could purchase natural gas from an independent third-party supplier and then have it delivered by NICOR through its pipelines.

9. Initially, Defendant offered natural gas for sale to commercial customers on fixed-rate contracts and promised that the locked-in price would not change, no matter what the

circumstance.

10. In May or June 2000, Defendant invoked *force majeure* claiming rising natural gas prices and refused to honor those commercial fixed-rate contracts at the contracted price.

11. In 2002, Defendant expanded its market to include residential customers.

12. In February 2002, Defendant began marketing its program to the entire NICOR residential customer base. A virtually identical campaign aimed at Peoples Energy Choices For You™ customers began in May, 2002.

13. Defendant posts information regarding its gas supply services on its website and markets its gas supply services to NICOR Customer Select and Peoples Energy Choices For You™ customers through a telemarketing campaign.

14. One such service is a fixed-price storage contract under which Defendant allows customers to lock-in a fixed rate for a long-term contract to hedge against rising natural gas prices.

15. This contract allows its customers to store lower priced gas during the summer for use in the winter months. The contract duration is from three to five years.

16. Defendant outsources telemarketing tasks to an independent telemarketing company to solicit prospective customers orally. Telemarketers use a script provided by Defendant to solicit new customers.

17. Prospective customers are told that the fixed-rate contract can provide a consistent price in a volatile market and that the rates will not change no matter what the circumstances.

18. Once a customer orally agrees to utilize Defendant as its gas supplier, Defendant employs a third-party verifier to verify the customer's selection of Defendant as its natural gas supplier and to authorize that customer's participation in the program.

19. Approximately three days after third party verification, Defendant enrolls the customer in the program and mails to the customer a Welcome Letter which, *inter alia*, sets forth the terms and conditions of the agreement of the parties. This Welcome Letter is a written memorialization of the oral agreement entered into by the customer. See Exhibit 1.

20. The scripts and the welcome letter are similar in that they set forth the following basic terms of the agreement: (a) the Defendant shall charge the customer and the customer shall pay to the Defendant an absolute fixed price per therm for the natural gas for the duration of the contract, and (b) the price per therm will not increase for any reason. There is no unilateral modification clause as to the price in either the oral agreement or the written agreement as memorialized in the Welcome Letter.

21. The Defendant continued to market the above referenced programs through on or about August 13, 2005, when Defendant ceased its telemarketing campaign for the fixed-price program.

22. Natural gas prices had steadily been increasing over the course of the summer.

23. On or about September 24, 2005, Defendants purported to invoke *force majeure*. Thereafter, on or about October 3, 2005, Defendant began sending letters to its customers signed up under the fixed price program, notifying these customers that effective October 1, 2005, Defendant would no longer provide gas to said customers at the fixed contract price agreed to by Defendant. These letters continue to be sent to the 15,000 fixed-rate customers on a staggered basis and advise those customers of the retroactive nature of the price increase.

24. This letter of notification gives said customers the option of remaining a customer of Defendant at the fluctuating market rate for gas, or discontinuing with Defendant and being reverted back to either NICOR or Peoples Gas.

VI.

ALLEGATIONS OF UNLAWFUL CONDUCT

25. Defendant, by the conduct set forth herein, violated Section 2 of the Consumer Fraud Act in that during the course of its telemarketing solicitations, in order to induce consumers to enter into gas supply contracts, Defendant made material misrepresentations, or failed to disclose material information to consumers, including the following unfair or deceptive acts or practices:

a) That the price of natural gas was fixed for the duration of the term of the agreement when in fact Defendant has unilaterally modified their contract;

b) That the fixed price of natural gas would not increase during the term of the agreement no matter how high the price of natural gas increased in a volatile or uncertain market;

c) Failing to disclose that Defendant had previously invoked *force majeure* in the face of rising natural gas prices;

d) Failing to inform customers of the possibility of a *force majeure* if natural gas prices increased too a level not acceptable in the sole opinion of Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays for the following relief:

A. A finding that Defendant has engaged in trade or commerce.

B. A finding that Defendant has engaged in unfair or deceptive acts or practices in the conduct of trade or commerce in violation of Section 2 of the Consumer Fraud Act, 815 ILCS 505/2 (2004).

C. An order, preliminary and permanently, enjoining Defendant from engaging in acts or practices that violate the Illinois Consumer Fraud Act, 815 ILCS 505/1 et seq. (2004), including but not limited to, the unlawful acts and practices specified herein above.

D. An order, preliminarily and permanently, enjoining Defendant and all current and future officers, employees, agents, successors, assignees, servants, employees, and all persons in active concert with Defendant, including any affiliates and transferees or by any other name or through any other corporation, partnership or business entity in which Defendant has any interest, from doing business within the State of Illinois.

E. An order, preliminarily and permanently, enjoining Defendant as named herein, or by any other name or through any other corporation, partnership or business entity in which Defendant has any interest, from engaging in the trade or commerce of advertising or offering an advanced payment and storage based natural gas supply program within the State of Illinois.

F. An order forfeiting and suspending the license, charter, franchise, certificate, or other evidence of authority of Defendant to do business in the State of Illinois .

G. An order enjoining Defendant from invoking *force majeure* relative to all existing and future contracts with Illinois consumers.

H. An order requiring Defendant to specifically perform all contracts entered into with Illinois consumers.

I. An order requiring Defendant to pay a civil penalty of Fifty Thousand Dollars ($50,000.00), and an additional penalty of Fifty Thousand Dollars ($50,000.00) per violation of the Consumer Fraud Act for such violations the Court finds that Defendant committed with intent to defraud.

J. An order requiring Defendant to pay an addition civil penalty of no more than Ten Thousand Dollars ($10,000.00) for each violation of the Consumer Fraud Act for such violations the Court finds that Defendant committed against a person 65 years of age or older. 815 ILCS 505/7(c).

K. An order requiring Defendant to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud Act, 815 ILCS 505/1 et seq. (2004).

L. For such other and further relief as the Court deems equitable and just.

PEOPLE OF THE STATE OF ILLINOIS
BY LISA MADIGAN
Attorney General of Illinois

BY: ______________________
CHARLES G. FERGUS
Chief, Consumer Fraud Bureau

BY: ______________________
NICHOLAS S. RANTIS
Assistant Attorney General

Atty No. 99000

LISA MADIGAN
Attorney General of Illinois

CHARLES G. FERGUS
Chief, Consumer Fraud Bureau

NICHOLAS S. RANTIS
Assistant Attorney General
Consumer Fraud Bureau
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
312/814-7130

Santanna Energy Services

WELCOME LETTER

Congratulations on your participation in the Peoples/North Shore Gas sponsored "Choices For You℠" program. SES would like to take this opportunity to welcome you. You have a choice in natural gas suppliers and we thank you for choosing SES. Our competitive pricing and reliability, in addition to our premium service, are the reasons that we have served Illinois for over fifteen years.

We are very enthusiastic about your opportunity to find security and stability in a volatile energy market, and we are confident that you will be pleased with the SES program. This program is similar to the one in which many of our large commercial and industrial customers have reaped the rewards of selecting SES.

Remember, as we stated in our initial conversations, there are two components to the Santanna "Choices For You℠" program:

- First, your gas price will be fixed at $0.799 cents per therm. It won't go up for the next five years, no matter how high the price of gas goes in a volatile market. None of us know where gas prices are going in the future, but this assures you that your price won't be more than $0.799 cents per therm, no matter what.
- Second, leveled gas bills. SES will deliver your gas to Peoples/North Shore in a manner that will make your gas bills more constant through out the year. Instead of delivering the gas when you consume it, more in the winter and less in the summer. SES will deliver more gas than normal in the summer but less than normal in the winter. In essence, this shaves off part of the cost of higher winter bills and adds that part to the summer bills – summer bills that are typically much lower. The leveling of your gas deliveries is accomplished by making use of the gas storage component within "Choices For You℠".

The program manager, Peoples/North Shore, determines the amount of gas that SES will deliver each month throughout the year, and you will be charged each month by SES, for the amount of gas delivered, regardless of the amount you use. If you enter the "Choices For You℠" program in the spring, your monthly gas purchases will include moderate amounts of additional storage gas, plus usage, with storage gas purchases ending around November. If you enter the program during the late fall and winter months your monthly gas purchases will consist basically of gas usage only, until about May, when the normal storage cycle begins. The following year, you will participate in the full storage cycle and therefore will benefit more fully with leveled gas bills. Your annual total deliveries under the bill leveling program are expected to be similar to the amount of gas you buy on a usage-based program.

The SES gas sales charges and "Choices For You℠" charges will appear on your Peoples/North Shore utility bill. Your "Gas Sales Price" for the current billing cycle is shown in the "Supplier Messages" section on the second page of your Peoples/North Shore utility invoice. That section also contains the following line items:

(1) Beg Strg Bank	-- Storage balance at the beginning date of the billing cycle
(2) Net Flow	-- Total gas delivered to your account during the billing cycle
(3) Usage	-- Amount of gas that you consumed during the billing cycle
(4) End Strg Bank	-- Storage balance at the end of the billing cycle
(5) Program Charge	-- "Choices For You℠" program related charges – located just above the Supplier Messages section

Again, SES will deliver to Peoples/North Shore, the required gas volumes for your account to levelize your gas deliveries, as identified by Peoples/North Shore. The appropriate SES charges will appear on your Peoples/North Shore gas bill. Peoples/North Shore is still your utility, and it will continue to deliver your gas to you. Once SES delivers your gas to Peoples/North Shore, they handle everything from there. Any adjustments made in the amount of gas you receive or use are defined exclusively by Peoples/North Shore. You will continue to receive only one bill per month from Peoples/North Shore. Please remit your payment to Peoples/North Shore and they will pay SES.

EXHIBIT

1

If you have any questions about our program, please call the SES customer service department at 1-800-764-4427. Representatives are available Monday through Friday from 8:00 a.m. through 4:30 p.m. CST.

You have 20 days of grace period beginning the date you elected to participate. If you wish to cancel within the grace period, please call the enrollment termination message center no later than the "DEADLINE" stated to the left of the name and address on this letter. The message center is available 24 hours a day, seven days a week, at 1-877-737-4427. Please speak slowly and clearly and state the last name shown on this account (or company name, if this is a business), the telephone number and area code on the account, and the 5 characters "SES ID" listed under the "DEADLINE". This information must be complete to process the cancellation. Should you encounter a busy circuit, please try your call later. Retain this letter in a safe place for future reference.

The following is a breakdown of the time cycles affecting cancellation. If you:

- Cancel within 20 days of your election to participate (1-877-737-4427) —SES will void your election and will not submit your account for enrollment. If on day 21, SES has not received instructions otherwise, we will submit your account to Peoples/North Shore Gas for enrollment.
- Cancel after the 20 days, (1-800-764-4427) —SES will immediately submit your cancellation to the Peoples/North Shore Gas and they will determine your last day of service by SES. The last day of service should be 10 to 40 days from the submittal of the cancellation notice. Effective with the beginning of the billing cycle in which SES receives your cancellation, through your last day of service, SES will charge you for usage only. SES will credit you for any volume remaining in storage account on your last day of service per the terms and conditions section of this letter.

For gas emergencies or distribution questions, call Peoples Gas at 1-866-556-6002 or North Shore Gas at 1-866-556-6005, as always.

SES is a full service energy provider. In addition to natural gas, we also help our customers reduce their cost of electric, local/long distance telephone and Internet services. To learn more about SES, the "Choices For You™" program and our services, please visit our website at www.SantannaEnergyServices.com or give us a call. Please file this correspondence for future reference of the terms and conditions.

Thanks again for your business.

Sincerely,

Santanna Energy Services

Exhibit 2

2120 - Served	2121 - Served
2220 - Not Served	2221 - No Served
2320 - Served by Mail	2321 - Served by Mail
2420 - Served by Publication	2421 - Served by Publication
SUMMONS	ALIAS - SUMMONS

(Rev. 9/3/99) CCG 0001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

(Name all parties)

PEOPLE OF THE STATE OF ILLINOIS,	)	No. 05CH17519
Plaintiff,	)	
v.	)	PLEASE SERVE:
SANTANNA NATUREAL GAS CORPORATION d/b/a SANTANNA ENERGY SERVICES	)	**SANTANNA NATURAL GAS CORPORATION** via its Registered Agent Thomas F. Karaba 20 N. Clark Street, Suite 2310 Chicago, IL 60603
Defendants.	)	

SUMMONS

To each defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the office of the Clerk of this Court at the following location: Richard J. Daley Center, 50 W. Washington, Room 802 Chicago, Illinois 60602.

You must file within 30 days after service of this summons, not counting the day of service.
IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed. This summons may not be served later than 30 days after its date.

WITNESS, OCT 13 2005 ~~, 2004~~

DOROTHY BROWN
CLERK OF CIRCUIT COURT
Clerk of the Court

SEAL

Date of Service: 10-27-2005 ~~, 2004~~
(To be inserted by officer on copy left with defendant or other person)

Atty No. 99000
Nicholas S. Rantis, A.A.G.
Office of Illinois Attorney General
Attorney for Plaintiff
100 W. Randolph - 12th Floor
Chicago, Illinois 60601
312-814-7130

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT 2